



May 19, 1999

Mr. Peter F. Bagley
Blumberg & Associates
1414 West Randol Mill Road, Suite 118
Arlington, Texas 76012

OR99-1390

Dear Mr. Bagley:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124307.

The Webb Consolidated Independent School District (the "district"), which you represent, received a request from a student's parent for five items of information relating to the student's placement in a particular district program. You have withheld two of these items from the requestor: the student's folder "which was confiscated," and copies of notes taken while the superintendent was questioning the student about a burglary. You argue that the act does not require the district to return the folder to the requestor. You have submitted copies of pictures that the student drew on the folder and the superintendent's notes. You contend that these documents are excepted from disclosure pursuant to sections 552.026, 552.103, and 552.114 of the Government Code and section 58.005 of the Family Code.

You contend that the superintendent's notes are confidential under section 58.005 of the Family Code. Section 58.005(a) deems confidential "[i]nformation obtained . . . by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court." Fam. Code § 58.005(a). The district does not supervise or have custody of the requestor's son by order of the juvenile court. Therefore, the information that the superintendent obtained from the student and incorporated into his notes is not confidential under section 58.005. Section

58.007(c) of the Family Code deems confidential “law enforcement records and files concerning a child.” Fam. Code § 58.007(c). This confidentiality provision does not extend to school records, such as the superintendent’s notes.

You inform us that the district is maintaining the confiscated folder in a file relating to the student’s placement. We do not address the issues of the district’s authority to obtain the folder or whether the district must return the folder to the requestor, because the provisions of the act are not relevant to these issues. We will, however, consider the release of the copies of the pictures drawn on the folder.

Section 552.026 of the Government Code provides

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

For purposes of the Family Educational Rights and Privacy Act of 1974 (“FERPA”), “education records” generally include “records, files, documents, and other materials” that “contain information directly related to a student” and that “are maintained by an educational agency or institution or by a person acting for such agency or institution.”¹ 20 U.S.C. § 1232g(a)(4)(A). The copies of the drawings and the superintendent’s notes are both education records subject to FERPA. FERPA gives parents a right to inspect the education records of their children.² 20 U.S.C. § 1232g(a)(1)(A). Generally, exceptions to disclosure under the act do not apply to a parent’s request for her child’s educational records pursuant to FERPA. *See* Open Records Decision No. 431 (1985). Thus, section 552.103 of the Government Code may not be applied to deny the requestor her right to inspect her son’s education records under FERPA. ORD 431 at 3.

Pursuant to FERPA, the requestor is entitled to inspect her son’s folder and obtain copies of the drawings on the folder. FERPA also gives the requestor a right of access to the superintendent’s notes about her son. You inform us, however, that the superintendent’s notes do not pertain exclusively to the requestor’s son. You explain that the notes the superintendent took in his meeting with the requestor’s son are commingled with notes the

¹Section 552.114 of the Government Code excepts from disclosure “information in a student record at an educational institution funded wholly or partly by state revenue.” Gov’t Code § 552.114(a). This office has generally treated “student records” as the equivalent of “education records” protected by FERPA. *See* Open Records Decision Nos. 539 (1990), 477 (1987), 332 (1982).

²Section 552.114 gives parents a similar right of access their children’s student records. Gov’t Code § 552.114(b)(2).

superintendent took when he interviewed other students. You contend that giving the requestor access to the notes would infringe upon the privacy rights of the other students mentioned in the notes and would violate FERPA. FERPA states

If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.

20 U.S.C. § 1232g(a)(1)(A). The Family Policy Compliance Office of the United States Department of Education has interpreted this provision to

[allow] each parent or eligible student the right to inspect and review that portion of the document except for those parts directly related to other students. Where information directly related to two or more students is inseparable, then each parent or eligible student may inspect and review all the directly related information, even if it is also directly related to another student. In determining what information is “directly related” to a student, we have consistently stated that education records should not be viewed as a single and entire file but should be viewed as separate documents. Thus, each document should be evaluated separately to determine whether it is directly related to a particular student, and therefore, subject to inspection and review.

Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education, to Vanessa M. Sheehan (Oct. 1996) (copy enclosed). The copies of the notes submitted to this office are de-identified. *See* Open Records Decision No. 634 (1995) (educational institution seeking an attorney general decision should either remove personally identifiable nondirectory information from education records before submitting them to this office or obtain parental consent for disclosure of personally identifiable nondirectory information). Therefore, we cannot determine which information in the notes directly relates to the requestor’s son or whether that information can be separated from information about other students. Assuming that the information in the notes about the requestor’s son cannot be separated from information about other students, the requestor has a right of access to all information in the notes that is directly related to her son, even if the information is also directly related to another student.³

³We note that the common-law right to privacy does not protect any of the information in the superintendent’s notes. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common-law right to privacy protects information if (1) the

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 124307

encl. Submitted documents, Letter from United States Department of Education

information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public).